REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

PRIMELINE PRODUCTS PHILIPPINES, INC., As represented by LCB LEO B. PILAPIL by Virtue of a Special Power of Authority duly Executed by the company thru their Board of Directors, Petitioner,	**CTA CASE NO. 9281**
	Members:
- versus -	**UY,** *Chairperson* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
Hon. ALBERTO D. LINA, COMMISSIONER OF CUSTOMS, Respondent.	Promulgated: FEB 07 2020 10:16a.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

For resolution is Petitioner's **Motion for Reconsideration**[1], filed on October 16, 2019, with Respondent's **Comment** filed, through registered mail, on November 22, 2019, and received by the Court on November 27, 2019.

In its motion, Petitioner moves for the reconsideration of this Court's Decision[2] promulgated on September 26, 2019, in affirming the seizure made by the Commissioner of Customs ("COC") of Petitioner's imported motor vehicle. The dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of merit. Accordingly, the Decision of

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1 Docket, pp. 578 to 583-a.

2 *Id.*, pp. 560 to 577.

the Commissioner of Customs, affirming the Order dated November 05, 2015 issued by the District Collector, Manila International Container Port, forfeiting the subject motor vehicle to be disposed of in a manner provided by law, is likewise **AFFIRMED**.

SO ORDERED."[3]

Petitioner emphasizes that Respondent's basis in the seizure of its motor vehicle, *i.e.* its alleged violation of Executive Order ("EO") No. 156, was erroneous considering that the said EO was issued to *"Provide A Comprehensive Industrial Policy And Directions For The Motor Vehicle Development Program"*. Clearly, the law was intended to regulate the commercial motor vehicles production/assembly and importations, and definitely not for a single importation of a motor vehicle by a private individual or private company for their own use as in the case at bar.

Again, Petitioner claims that the imported motor vehicle was bought brand new from a reputable licensed Ford dealer in the United States of America. However, as per Subsection 2.1.1, Section 2, Article 2 of EO No. 156, for a motor vehicle to be considered as brand new, it should have a mileage of not more than two hundred (200) kilometers. Thus, Petitioner argues that apparently the kilometer readings of the subject motor vehicle is the lone fault that was capitalized by Respondent to declare the vehicle as already used instead of being brand new, and thereby forfeit the same, to the prejudice of the owner, who is a purchaser in good faith.

Moreover, Petitioner quotes page 9 of the assailed Decision stating that, "[a]lthough both parties invoke EO No. 156 as basis for their arguments, considering that the importation was made in 2015, the Court finds that EO No. 877-A should be applied, in case of inconsistency, considering that the latter was issued in 2010 while the former was issued in 2002." As such, Petitioner asserts that the said court pronouncement evidently showed that Respondent used the wrong law (EO No. 156, instead of EO No. 877-A) as basis for the issuance of the Warrant of Seizure and Detention ("WSD") on September 4, 2015. Consequently, the said WSD must be considered null and void *ab initio*, since the alleged violation committed in EO No. 156 have already been repealed by EO No. 877-A.

Petitioner further claims that the error committed by Respondent in the WSD is jurisdictional since it violates the due process clause. It insists that an erroneous violation stated in the WSD tantamount to an outright denial of due process, even if the proceedings against the shipment of herein Petitioner is *in rem*, since the wrong citation of the law violated prevented Petitioner from preparing the correct defenses and arguments against said accusation.

[3] *Id.*, p. 576.

On the other hand, in his comment, Respondent maintains that he has the legal authority to seize Petitioner's imported motor vehicle. Respondent primarily argues that the importation of motor vehicles to the Philippines is regulated by EO Nos. 156 and 877-A, and under both executive orders, the importation of all types of used motor vehicles is prohibited, subject to certain exceptions.

As such, Respondent avers that under both EOs, the subject motor vehicle seized does not pass the legal definition of a brand new vehicle. Respondent explains that, at the time of its importation, the subject motor vehicle was a previous year model and already has a mileage of 1,713 kilometers, which is 1,513 kilometers over the maximum mileage allowed by law. Hence, as a used motor vehicle, the importation of the subject vehicle is prohibited and subject to seizure and forfeiture.

After due consideration, this Court finds no merit in the present Motion for Reconsideration. Notably, the arguments proffered by Petitioner in support of its Motion are mere rehash or reiteration of its previous arguments, which had already been considered, thoroughly discussed, and passed upon in the Decision assailed.

To reiterate, Respondent did not violate Petitioner's right to due process when it cited EO No. 156 as basis for the seizure of Petitioner's imported motor vehicle.

A comparison between the provisions of Sections 2 and 3, Article 2 of EO No. 156 and EO No. 877-A clearly shows that both EOs have the same definition of what are considered brand new vehicles and, in addition, both also prohibit the importation of all types of used motor vehicles save in certain cases, *viz*:

EO No. 156	**EO No. 877-A**
Section 2. *Brand new vehicles* 2.1 The importation of brand new motor vehicles shall be allowed pursuant to Executive Order No. 264, series of 1995 and Monetary Board Circular No. 92, series of 1995. To be considered brand new, the motor vehicle shall be (a) of current or advance year model in the country of origin and/or manufacture, or (b) of year model immediately preceding year in the country of origin and/or manufacture provided that:	Section 2. *Brand New Vehicles.* – The importation of brand new motor vehicles shall be allowed pursuant to Executive Order No. 264, series of 1995 and Monetary Board Circular No. 92, series of 1995. To be considered brand new, the motor vehicles shall be (a) of current or advance year model in the country of origin and/or manufacture, or (b) of year model immediately preceding year in the country of origin and/or manufacture, provided that:
2.1.1 The motor vehicle has a mileage of not more than 200 kilometers; and	a. The motor vehicle has a mileage of not more than 200 kilometers; and

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2.1.2 The motor vehicle has been acquired by the importer from the dealer as first owner.	b. The motor vehicle has been acquired by the importer from the dealer as first owner.
Section 3. *Used motor vehicles.* 3.1 The importation into the country, [inclusive of the Freeport], of all types of used motor vehicles is prohibited, except for the following: x x x	Section 3. *Used Motor Vehicles.* – The importation into the customs territory or the Philippine territory outside the secured fenced-in Freeport zones of all types of used motor vehicles is prohibited except for the following: x x x

However, a difference lies in the penalty provided, *i.e.*, while EO No. 156 provides that all imported vehicles found to be in violation of any provision in the EO shall be subject to seizure without redemption, EO No. 877-A provides that aside from being subject to seizure, the same shall be re-exported at the expense of the importer/consignee immediately, to wit:

EO No. 156	**EO No. 877-A**
Section 5. *Penalty* 5.1 All imported vehicles found to be in violation of any provision in this EO shall be subject to seizure without redemption by the BOC and will not be subject to registration by the LTO unless disposed of in accordance with the Tariff and Customs Code. x x x	Section 7. *Penalty.* – All vehicles imported found to be in violation of this Executive Order shall be subject to seizure and re-exported at the expense of the importer/consignee immediately.

Furthermore, Section 1, Article 12 of EO No. 877-A provides that:

> "SECTION 1. *Repealing Clause.* — All other orders, rules and regulations or parts thereof, which are inconsistent with the provisions of this Executive Order, are hereby repealed, amended or modified accordingly."

Being the more recent enactment, the above repealing clause does not specifically mention a repeal of any provision of EO No. 156. As such, the failure to add a specific repealing clause particularly mentioning the statute to be repealed indicates that the intent was not to repeal any existing law on the matter, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and the old laws.[4]

Perforce, where an amendment leaves certain portions of the original act unchanged, such portions are continued in force, with the same meaning and effect they had before the amendment. So where an amendatory act provides that an existing statute shall be amended to read as recited in the amendatory act, such portions of the existing law as are retained, either literally or substantially, are regarded as a continuation of the existing law, and not as a new enactment.[5]

Applying the foregoing, albeit the BOC cited EO No. 156 as its basis for the seizure of the subject imported motor vehicle, the pertinent provisions of EO No. 156 are not inconsistent with the provisions of EO No. 877-A, which therefore, continues to be in force.

Consequently, this Court finds that Petitioner was duly informed of the basis of the seizure as both EO Nos. 156 and 877-A prohibit the importation of used motor vehicles except in certain cases.

Lastly, the Supreme Court has emphasized time and again the imperative necessity for administrative agencies to observe the elementary rules of due process. And no rule is better established under the due process clause of the Constitution than that which requires notice and opportunity to be heard before any person can be lawfully deprived of his rights.[6] Considering that Petitioner was given an opportunity to be heard, as in fact, it was able to raise its defenses and arguments, by filing its letter dated September 01, 2015 and position paper with the District Collector and even filed an appeal with the COC, accordingly therefore, there was no violation of due process.

In view of the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision dated September 26, 2019.

WHEREFORE, premises considered, Petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen S. L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[4] Lazaro C. Gayo vs. Violet G. Verceles, G.R. No. 150477, February 28, 2005.
[5] Demetria Estrada vs. Uldarico Caseda, G.R. No. L-1560, October 25, 1949.
[6] Ute Paterok vs. Bureau of Customs, et al., G.R. Nos. 90660-61, January 21, 1991.

I CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice